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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of Application by **BELLSOUTH CORPORATION,** BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in South Carolina	CC Docket No. 97-208

COMMENTS OF THE PAGING AND NARROWBAND PCS ALLIANCE OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

THE PAGING AND NARROWBAND PCS ALLIANCE OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION
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SUMMARY OF ARGUMENT

The Paging and Narrowband PCS Alliance of the Personal Communications Industry Association ("PNPA") urges the Commission to deny BellSouth's application under section 271 of the Telecommunications Act of 1996. It is not in the public interest to permit BellSouth into the long distance market until such time as it complies fully with all its interconnection obligations, including its obligations toward paging companies and other providers of commercial mobile radio services ("CMRS"). At this time, BellSouth continues to *charge* PNPA members who provide paging services in South Carolina for *BellSouth-originated* traffic. These practices violate the specific provisions of the Telecommunications Act of 1996, the regulations adopted by the Commission both before and after that Act, and the Commission's long-standing policy of mutual compensation between local exchange carriers ("LECs") and CMRS providers.

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COMMENTS OF THE PAGING AND NARROWBAND PCS ALLIANCE OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Paging and Narrowband PCS Alliance of the Personal Communications Industry Association ("PNPA")[1] respectfully submits its comments on the application by BellSouth Corporation and its affiliates ("BellSouth") to provide in-region, interLATA services in South Carolina. PNPA urges the Commission to deny the application on the ground that it is not in the public interest to permit BellSouth into the long distance market until such time as it complies fully with all its interconnection obligations, including its obligations toward paging companies and other providers of commercial mobile radio services ("CMRS"). At this time, BellSouth continues to *charge* PNPA members who provide paging services[2] in South Carolina for *BellSouth-originated* traffic. These practices violate the specific provisions of the

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1 PCIA is the international trade association that represents the interests of both commercial and private mobile radio service providers. PCIA's Federation of Councils includes the Paging and Narrowband PCS Alliance; the Broadband PCS Alliance; the Mobile Wireless Communications Alliance; the Site Owners and Managers Association; the Association of Communications Technicians; and the Private System Users Alliance.

2 PNPA represents both traditional paging service providers and narrowband PCS licensees. As used in these comments, the term "paging" is intended to embrace narrowband PCS as well.

Telecommunications Act of 1996, the regulations adopted by the Commission both before and after that Act, and the Commission's long-standing policy of mutual compensation between local exchange carriers ("LECs") and CMRS providers.

BellSouth Is Not Complying with Its Interconnection Obligations

The Commission has long recognized that both wireline and mobile service providers are carriers, and that each should be obligated to interconnect for the purpose of terminating the other's traffic.[3] Ten years ago, the Commission expressly stated that wireline/cellular interconnection should be based on the principle of "mutual compensation" — that is, that mobile service providers and LECs "are equally entitled to just and reasonable compensation for their provision of access."[4] The Commission adopted these policies pursuant to section 201 of the Communications Act of 1934.[5]

When Congress amended the Communications Act in 1993 to create a comprehensive federal framework for commercial mobile radio services,[6] the Commission reaffirmed its reciprocal compensation policies and extended them to all CMRS providers.[7] The Commission adopted a new regulation on LEC-CMRS interconnection that expressly requires "mutual compensation."[8] LECs must pay CMRS providers "reasonable compensation . . . in connection with terminating traffic that originates on facilities of the local exchange carrier," and CMRS

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3 *Cellular Communications Systems,* 86 F.C.C.2d 469, 496 (1981), *recon.,* 89 F.C.C.2d 58 (1982).

4 *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services,* 2 F.C.C. Rcd. 2910, 2915 (1987), *recon.,* 4 F.C.C. Rcd. 2369 (1989).

5 47 U.S.C. § 201.

6 47 U.S.C. § 332. Section 332 expanded the Commission's authority under section 201 of the Act to order interconnection requested by CMRS providers. 47 U.S.C. § 332(c)(1)(B).

7 *Implementation of Sections 3(n) and 332 of the Communications Act,* 9 F.C.C. Rcd. 1411, 1497-1501 (1994).

8 47 C.F.R. § 20.11(b), *reprinted as originally adopted at* 9 F.C.C. Rcd. 1411, 1520-21.

providers must pay for CMRS-originated traffic.[9] By requiring LECs to *compensate* CMRS providers for LEC-originated traffic (and *vice versa*), the regulation logically prohibits any LEC from *collecting* from a CMRS provider for LEC-originated traffic. The Commission has confirmed that LEC attempts to charge CMRS providers for LEC-originated traffic violate section 20.11 of the Commission's rules.[10]

These same obligations were independently imposed by the Telecommunications Act of 1996.[11] Section 251(b)(5) of the Act requires all LECs "to establish reciprocal compensation arrangements for the transport and termination of telecommunications."[12] Paging providers, like all other CMRS providers, offer "telecommunications."[13] Thus, the reciprocal compensation obligation of section 251(b)(5)—which forbids LEC charges for LEC-originated traffic — applies to paging providers as well as other CMRS providers. The Commission made this explicit in its *Local Interconnection Order,*[14] where it stated, "All CMRS providers offer telecommunications. Accordingly, LECs are obligated pursuant to section 251(b)(5) (and the corresponding pricing standards of section 252(d)(2)), to enter into reciprocal compensation arrangements with all CMRS providers, *including paging providers,* for the transport and

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9 *Id.*

10 *Local Interconnection Order,* 11 F.C.C. Rcd. at 16044 ("we conclude that, in many cases, incumbent LECs . . . imposed charges for traffic originated on CMRS providers' networks, . . . in violation of section 20.11 of our rules"). While the Commission has invoked sections 251 and 252 of the Telecommunications Act of 1996 to promulgate new interconnection requirements in Part 51 of the Commission's rules (discussed below), the Commission retains its section 332 jurisdiction, *Local Interconnection Order,* 11 F.C.C. Rcd. at 16005, as exercised in section 20.11 of the Commission's rules.

11 Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. §§ 151 *et seq.*

12 47 U.S.C. § 251(b)(5). Significantly, this is an obligation so fundamental that it is imposed on *all* LECs, not just incumbents.

13 47 U.S.C. § 3(43).

14 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* 11 F.C.C. Rcd. 15499 (1996) ("*Local Interconnection Order*").

termination of traffic on each other's networks, pursuant to the rules governing reciprocal compensation . . . ."[15] The Commission also noted once again that section 251(b)(5), by requiring the LEC to *compensate* the CMRS provider for LEC-originated traffic, necessarily prohibits any arrangement by which the LEC *charges* the CMRS provider for LEC-originated traffic.[16]

The FCC codified its interpretation in section 51.703(b) of its rules, which states as plainly as possible, "A LEC *may not assess charges* on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network."[17] Section 51.703(b) forbids *all* LEC charges for LEC-originated traffic, as the Common Carrier Bureau confirmed earlier this year.[18] In addition, section 51.709(b) states that a LEC providing transport and termination between its network and that of another carrier "shall recover only the costs of the proportion of trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network."[19] In the case of paging carriers, this proportion is effectively zero, since most paging traffic is one-way at the present time. Both section 51.703(b) and 51.709(b) were among the regulations expressly excepted from *vacatur* by the U.S. Court of Appeals for the Eighth Circuit with respect to CMRS providers, and both apply with full force to LEC-CMRS interconnection today.[20] In addition to Part 51 of the Commission's rules, section

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15 *Local Interconnection Order,* 11 F.C.C. Rcd. at 15997 (emphasis added). *See also id.* at 16016.

16 *Local Interconnection Order,* 11 F.C.C. Rcd. at 16016.

17 47 C.F.R. § 51.703 (1996) (emphasis added).

18 Letter from Regina M. Keeney to Cathleen Massey, Kathleen Abernathy, Mark Stachiw, and Judith St. Ledger-Roty (March 3, 1997).

19 47 C.F.R. § 51.709(b).

20 *Iowa Utilities Bd. v. FCC,* 120 F.3d 793, 800 n.21 (8th Cir. 1997). *See also* Public Notice, *Summary of Currently Effective Commission Rules for Interconnection Requests by Providers of Commercial Mobile Radio Service,* FCC 97-344 (Sept. 30, 1997).

20.11 of the Commission's rules independently prohibits the LEC charges for LEC-originated traffic. This rule was never stayed and applies without regard to any Part 51 rule.[21]

Despite the strictures of directly applicable regulations in Parts 20 and 51, the Commission's many previous efforts to facilitate fair interconnection between LECs and paging providers for at least ten years prior to the passage of the Telecom Act of 1996, and the Commission's recent confirmation that section 51.703 prohibits LEC charges for termination of LEC-originated traffic, *BellSouth continues to charge paging providers in South Carolina for the facilities used to transport BellSouth-originated traffic.*[22] This strikes at the heart of the Commission's interconnection policy. Under the Telecom Act of 1996 and the Commission's implementing regulations, paging providers *must accept* BellSouth-originated traffic to accommodate BellSouth customers who call paging subscribers. BellSouth, for its part, must deliver this traffic free of charge. It may *not* charge paging providers for traffic that originates on its own network, any more than it may charge any other class of co-carriers to whom it delivers BellSouth-originated traffic.

State regulatory authorities are also interpreting the reciprocal compensation requirement of sections 251 and 252 to prohibit LECs from charging their co-carriers for calls that originate on the LEC's network. Earlier this year, the California Public Utilities Commission rejected an arbitrated interconnection agreement between Cook Telecom, Inc., a one-way paging company,

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21 *Local Interconnection Order,* 11 F.C.C. Rcd. at 16044, 16044 n.2633.

22 Letters evidencing BellSouth's unlawful charges are attached in Appendix A. To the extent these letters evidence any basis on which reasonable minds could differ about LEC-CMRS interconnection obligations, the Commission could eliminate any uncertainty by acting promptly on SBC's request for clarification of those obligations. *Clarification of the Commission's Rules on Interconnection Between LECs and Paging Carriers,* CCB/CPD 97-24.

and Pacific Bell.[23] The California PUC found that Congress required LECs to interconnect with *all* providers of communication services, and to compensate each carrier on reasonable terms and conditions for the costs that it incurs in terminating calls to the called party that originate on the LEC's network.[24] Pacific Bell had argued that paging providers were not entitled to reciprocal compensation because paging services are one-way, and paging providers do not originate any calls for termination on the LEC's network. The PUC properly rejected this argument:

> We believe that Congress intended that each and every carrier should be compensated for the costs that it incurs in terminating traffic, and did not intend to deny a class of carriers—in this case, one-way paging—the right of compensation simply because there is no traffic terminated on the local exchange carrier's network.[25]

In a concurring statement, Commissioner Henry Duque added:

> [G]overnment policy is better founded on treating all messages equally. What difference should it make if a call terminates to a voice mail machine in a central office, to an answering machine at home, to a fax store-and-forward service in a central office, to a fax machine in a business, to a person on a phone, or to a paging device? In my view, they are all calls. Efforts to regulate messages differently based on call characteristics would necessarily lead the Commission down a path of increasing regulation.[26]

Commissioner Duque's view is, of course, the same one espoused both by Congress when it passed the 1996 Telecom Act and prior to that by the Commission.[27] PNPA encourages the

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23 *See Application of Cook Telecom, Inc. for Arbitration Pursuant to Section 252 of the Federal Telecommunications Act of 1996 to Establish an Interconnection Agreement with Pacific Bell*, A.97-02-003 (May 21, 1997).

24 *Cook Decision* at 3.

25 *Id.* at 4.

26 *Id., Concurring Statement of Commissioner Henry Duque,* at 1.

27 In fact, the California PUC noted that it was in agreement with the FCC on this point: "The FCC was careful to expressly specify, and clarify any perceived ambiguity, that paging providers are included in the class of CMRS providers entitled to compensation for terminating traffic." *Id., California PUC Decision*, at 4-5.

Commission to exercise its leadership by enforcing its interconnection rules and policies, as California is doing.

BellSouth's Application Under Section 271 Cannot Be Granted Until BellSouth Meets Its Interconnection Obligations.

The Telecommunications Act of 1996 amended the Communications Act of 1934 to add a new section 271 governing Bell Operating Company entry into interLATA services. Section 271 permitted the BOCs to provide out-of-region, interLATA services immediately, but required them to apply to the FCC for authority to provide in-region, interLATA services. Section 271 forbids the Commission from granting such an application unless it finds, among other things, that "the requested authorization is consistent with the public interest, convenience, and necessity."[28] Until BellSouth meets its reciprocal compensation obligations toward paging carriers and stops charging for BellSouth-originated traffic, its entry into in-region, interLATA services would not be consistent with the public interest, convenience, and necessity.

Approval of the BellSouth application at this time would be inconsistent with the public interest, necessity, and convenience for four reasons. First, the Commission has previously announced that swift implementation of reciprocal compensation for LEC-CMRS interconnection is essential to the public interest. Indeed, in a Notice of Proposed Rulemaking released less than a month before the Telecom Act was signed into law, the Commission stated, "Any significant delays in the resolution of issues related to LEC-CMRS interconnection compensation arrangements, combined with the possibility that LECs could use their market power to stymie the ability of CMRS providers to interconnect (and may have incentives to do

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[28] 47 U.S.C. § 271(d)(3).

so), could adversely affect the public interest." [29] Congress underscored the public interest in reciprocal compensation by expressly incorporating it into the 1996 Act. Yet more than a year has passed since that time and BellSouth continues to insist on being paid by paging providers for traffic BellSouth originates. This is, by any standard, a "significant delay," that has "adversely affect[ed] the public interest."[30] Surely the public interest in eradicating these unfair charges is not less important now that Congress has spoken, nor less urgent now that another year has passed without compliance.[31]

Second, as a matter of simple fairness, BellSouth should not have its application granted at this time. BellSouth claims to have complied with reciprocal compensation obligations toward CLECs, but its Brief ignores interconnection with paging carriers.[32] By avoiding its reciprocal compensation obligations under the 1996 Act, as well as sections 20.11 and 51.703(b) of the Commission's rules, BellSouth has to date reneged on its part of the bargain that is section 271. BellSouth should not enjoy the benefits of the new, competitive marketplace as long as it uses its dominant position in the local exchange market to require paging providers to pay for BellSouth-originated traffic.

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29 *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers,* 11 F.C.C. Rcd. 5020, 5047 (1996).

30 *Id.,* 11 F.C.C. Rcd. at 5047.

31 CMRS concerns should figure prominently in the Commission's consideration of this application for another reason as well. Given the many acknowledgments in the BellSouth Brief that this application fails to meet the standards set forth in the Commission's *Ameritech* order, some have speculated that BellSouth filed the instant application for the sole purpose of suing the FCC once more after the inevitable denial. It should be noted that an express finding based on the experience of PNPA's would be squarely within the Commission's unquestioned jurisdiction over CMRS providers, and would therefore tend to insulate a denial of BellSouth's application from reversal on appeal.

32 BellSouth Brief at 52. Interestingly, BellSouth's argument on reciprocal compensation leans heavily on its earlier argument that the FCC has no jurisdiction over intrastate pricing. With respect to CMRS providers, however, the FCC plainly does have jurisdiction to enforce the interconnection rules BellSouth is violating. *Iowa Utils. Bd.,* 120 F.3d at 800 n.21.

Third, some of the structural safeguards in section 272 will "sunset" based on the date on which a section 271 application is granted. For example, the structural safeguards will cease to apply to a BOC's manufacturing activities three years after the date the BOC is authorized to provide in-region, interLATA services under section 271(d).[33] These structural safeguards are intended to curb abuse of market power by the BOCs. It would be unwise to start down the path toward the "sunset" of these provisions when BellSouth has not yet complied with its legal obligations toward paging providers.[34]

Finally, the Commission's own enforcement credibility is at stake here. Over the last ten years, the Commission has repeatedly proclaimed that LEC-CMRS interconnection should be based on principles of reciprocal compensation. So far, notwithstanding regulations in Parts 20 and 51, BellSouth continues to charge paging providers for calls originated by BellSouth's customers. In the *Local Interconnection Order,* the Commission acknowledged that the promulgation of intelligent rules is useless if the rules are not followed:

> Because of the critical importance of eliminating these barriers to the accomplishment of the Act's pro-competitive objectives, *we intend to enforce our rules in a manner that is swift, sure, and effective.* . . . We recognize that during the transition from monopoly to competition it is vital that we and the states vigilantly and vigorously enforce the rules that we adopt today and that will be adopted in the future to open local markets to competition. *If we fail to meet that responsibility, the actions that we take today to accomplish the 1996 Act's pro-competitive, deregulatory objectives may prove to be ineffective.*[35]

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33 47 U.S.C. § 272(f)(1).

34 BellSouth takes a cramped—and unprecedented—view of the scope of the public interest inquiry. *BellSouth Brief* at 68-72. However, even BellSouth admits that the Commission may consider "the applicant's history of compliance or non-compliance iwth Commission rules." *Id.* at 70.

35 *Local Interconnection Order,* 11 F.C.C. Rcd. at 15511-12 (emphasis added).

Having promised "swift, sure, and effective" enforcement — and having acknowledged that nothing less than the success of the 1996 Act may well depend on that enforcement — the Commission simply cannot *affirmatively reward* a carrier that has not implemented one of the most basic commands of the emerging, competitive future.

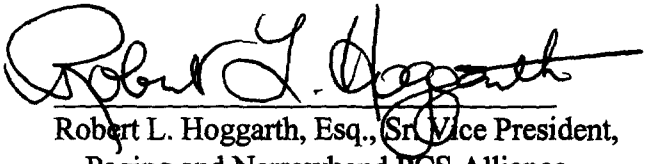
Congress knew that the only way to elicit the BOCs' cooperation in opening up the local bottleneck was to condition their entry into the long-distance market on full satisfaction of interconnection obligations. That is the whole theory of section 271. The Commission, having failed for ten years to elicit the BOCs' cooperation on LEC-CMRS reciprocal compensation, must not give away the in-region, interLATA market until BellSouth keeps up its end of the deal. Until BellSouth complies with its ten-year-old reciprocal compensation obligations to paging carriers, it will not be in the public interest to permit BellSouth into the interLATA market in South Carolina or anywhere else in its region.

CONCLUSION

For the reasons set forth above, BellSouth is not yet in compliance with the Commission's interconnection rules. To approve its application under section 271 would be contrary to the rule of law, and decidedly not in the public interest. PNPA therefore urges the Commission to deny the BellSouth application and make clear that it will deny all such applications in the future if the applicant does not meet the Commission's reciprocal compensation requirements.

Respectfully submitted,

THE PAGING AND NARROWBAND PCS ALLIANCE OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION



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APPENDIX A

David M. Falgoust
General Attorney

BellSouth Telecommunications, Inc.
Legal Department - Suite 4300
675 West Peachtree Street
Atlanta, Georgia 30375-0001
Telephone: 404-335-0767
Facsimile: 404-614-4054

December 11, 1996

Mr. Frederick M. Joyce
Joyce & Jacobs
1019 19th Street, NW
Fourteenth Floor
Washington, DC 20036

Re: Paging Interconnection Agreements between BellSouth and Metrocall

Dear Rick:

I have your letter dated November 19, 1996 to Mr. Billy McCarthy concerning interconnection arrangements between BellSouth Telecommunications, Inc. ("BellSouth") and Metrocall, Inc. ("Metrocall"). You make a number of assertions in that letter about the FCC's First Report and Order in Docket 96-98 (the "Interconnection Order") and its current relevance to the referenced arrangements. While BellSouth agrees with some of your assertions, it disagrees with others.

BellSouth agrees that unless it is modified, section 51.701 of the FCC's rules establishes the Major Trading Area as the local calling area for purposes of reciprocal compensation between LECs and CMRS providers. BellSouth also agrees that the FCC's Second Report and Order ("SR&O") required BellSouth to cease charging CMRS providers NXX establishment charges as of October 7, 1996, the effective date of the SR&O. BellSouth agrees further that section 51.717 of the FCC's rules allows any CMRS provider that operates under an arrangement with an incumbent LEC that was established before August 8, 1996 to renegotiate the arrangement if it does not provide for reciprocal compensation.

BellSouth does not agree, however, with the implication in your letter that BellSouth is inappropriately "billing MetroCall for any local LEC/landline based termination or transport charges...." While section 51.703(b) of the FCC's rules prohibits LECs from assessing charges on other telecommunications carriers for terminating local "traffic" that originates on the LEC's network, as explained in the Interconnection Order, this provision was adopted in response to the apparent practice of some LECs which charged CMRS providers originating access charges for delivering traffic to them. *See*

Interconnection Order, para. 1030, and footnote references. BellSouth does not now and never has charged CMRS providers for transporting and terminating local traffic originating on BellSouth's network. There are, therefore, no such charges to "cease."[1]

The Telecommunications Act of 1996 explicitly requires both BellSouth and MetroCall to negotiate in good faith the terms and conditions of interconnection arrangements pursuant to the Act. If Metrocall desires to engage in such negotiation, BellSouth will be happy to do so. I hope that this clarifies BellSouth's positions with respect to the issues raised in your letter. Please do not hesitate to contact me if you have any questions. With best personal regards, I remain

Very truly yours,

David M. Falgoust

cc: Mr. Randy Ham

[1] While for the reasons stated above it is irrelevant to this correspondence, BellSouth also disagrees that the effective date of the FCC rules with respect to which the stay has been lifted is August 30, 1996. Those rules became effective for the first time on November 1, 1996.

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February 19, 1997

Mr. Frederick M. Joyce
Joyce & Jacobs
1019 19th Street, NW
Fourteenth Floor
Washington, DC 20036

Re: Interconnection with BellSouth

Dear Rick:

In response to your letter dated January 28, 1997, concerning interconnection arrangements between BellSouth and Metrocall, I will attempt, once again, to set forth BellSouth's positions on the issues that you believe remain unclear.

As I advised you previously, BellSouth ceased charging for NNX establishment on October 7, 1996, pursuant to the directives of the FCC's Second Report & Order in Docket 96-98. Contrary to Metrocall's contention, however, the Second Report & Order does not prohibit BellSouth from imposing recurring charges for DID numbers. BellSouth is certainly entitled to recover its costs of providing and administering DID numbers. Hence, with respect to recurring charges for Type 1 (DID) numbers, BellSouth will perform a cost study specific to CMRS arrangements and reprice such recurring charges based on the cost study. BellSouth will then apply the new recurring charges retroactively to October 7, 1996.

BellSouth does not now and never has charged CMRS providers for transporting and terminating local traffic originating on BellSouth's network. Metrocall and some other paging carriers have asserted, however, that Section 51.703 of the FCC's rules requires BellSouth to provide interconnection and transport facilities free to paging carriers. I explained BellSouth's position on this issue in some detail in my letter to you dated December 11, 1996, and will not repeat it here. Furthermore, to the extent that Metrocall relies on Sections 51.707 and 51.709 in support of its position, those rules, of course, remain "stayed" by the Eighth Circuit. When the Eighth Circuit renders a decision on the pending appeal, BellSouth will reevaluate its position based on the Court's decision. Meanwhile, BellSouth maintains that Metrocall remains obligated to pay for facilities that BellSouth is providing to Metrocall pursuant to currently effective tariffs.

Finally, you have asked for a draft interconnection agreement while at the same time "reserving [your] right to initiate...negotiations...with BellSouth." As a matter of courtesy, I am enclosing a specimen of the text of an interconnection agreement that BellSouth has executed with other CMRS providers. I must reiterate, however, that the Telecommunications Act of 1996 explicitly requires both BellSouth and Metrocall to negotiate in good faith the terms and conditions of interconnection arrangements pursuant to the Act. BellSouth is certainly willing to engage in such negotiation with Metrocall. It is impossible, however, for BellSouth to negotiate with a party who is unwilling to do so.

I hope that this clarifies BellSouth's positions with respect to the issues raised in your letter. Please do not hesitate to contact me if you have any questions concerning the foregoing. With best personal regards, I remain

Very truly yours,

David M. Falgoust

cc: Mr. Randy Ham

Arch

October 16, 1997

Mr. David M. Falgoust
General Attorney
BellSouth
Legal Department - Suite 4300
675 West Peachtree Street
Atlanta, Georgia 30375-0001

Dear Mr. Falgoust:

As you are aware, the Eighth Circuit Interconnection Decision in *Iowa Utilities Board v. FCC* confirmed that rules 51.703 and 51.709(b), with respect to CMRS providers, remain in full force and effect. Last February BellSouth maintained that Arch was obligated to pay for BellSouth's interconnection facilities (2/7/97 letter). However, at that time you also stated that "(w)hen the Eighth Circuit renders a decision on the pending appeal, BellSouth will reevaluate its position based on the Court's decision".

Three months after the Eighth Circuit Decision, BellSouth continues to charge Arch for the interconnection facilities BellSouth utilizes to transport its traffic to Arch's network. Arch respectfully requests that BellSouth immediately cease these charges and refund the payments Arch has been coerced to pay for the past year.

I sincerely hope that BellSouth sees the merit of Arch's request and emulates Cincinnati Bell Telephone, who, this month, credited Arch's interconnection accounts for past facility charges. See also Bell Atlantic's September 30 notification to cease charging for one-way paging trunks (attached). Please respond to this letter by October 24.

Sincerely,

Dennis M. Doyle
Assistant Vice President Telecommunications

Attachment (2)

cc: P. H. Kuzia
R. Ham (BellSouth)

David M. Falgoust
General Attorney

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February 7, 1997

Mr. Dennis M. Doyle
Assistant Vice President Telecommunications
Arch Communications Group, Inc.
1800 West Park Drive, Suite 350
Westborough, Massachusetts 01581-3912

Re: Interconnection with BellSouth

Dear Mike:

Thank you for coming to Atlanta to meet with Randy Ham and me on January 23, 1997. Your perspective on the issues related to LEC/CMRS interconnection was very useful to us. As we told you during our meeting, BellSouth has been examining its policy positions related to interconnection with paging carriers in the context of what we believe is a correct reading of the Telecommunications Act and the FCC's orders, and the uncertainty created by the pending Eighth Circuit appeal and stay.

As you know, BellSouth ceased charging for NNX establishment on October 7, 1996, pursuant to the directives of the FCC's Second Report & Order in Docket 96-98. With respect to recurring charges for Type 1 (DID) numbers, BellSouth will perform a cost study specific to CMRS arrangements and reprice such recurring charges based on the cost study. BellSouth proposes further to apply the new recurring charges retroactively to October 7, 1996.

BellSouth simply disagrees, however, with the assertion by Arch and some other paging carriers that Section 51.703 of the FCC's rules requires LECs to provide interconnection and transport facilities free to paging carriers. I explained BellSouth's position on this issue in detail in my letter to you dated January 9, 1997. To the extent that Arch relies on Sections 51.707 and 51.709 in support of its position, those rules, of course, remain "stayed" by the Eighth Circuit. When the Eighth Circuit renders a decision on the pending appeal, BellSouth will re-evaluate its position based on the Court's decision. Meanwhile, BellSouth maintains that Arch remains obligated to pay for facilities that BellSouth is providing to Arch pursuant to currently effective tariffs.

Please do not hesitate to contact me if you have any questions concerning the foregoing. With best personal regards, I remain

Very truly yours,

David M. Falgoust

Bell Atlantic Network Services, Inc. Carrier Services
Two Bell Atlantic Plaza
1320 North Court House Road
Ninth Floor
Arlington, Virginia 22201

September 30, 1997

cc: Mike Doyle
Jay Scott Hoyt

Mr. Scott Hoyt
Arch Communications Inc.
1800 W. Park Drive
Westborough, MA. 01581

To All Paging Carriers:

RE: One-Way Type 2 Paging Interconnection

Effective with the lifting of the Federal Court Stay on November 1, 1996, Bell Atlantic stopped billing usage charges associated with one-way Type 2 paging trunks. However, due to billing system limitations, the non-usage sensitive entrance facility charge continued to appear on the bills in states that had Local Transport Restructure (LTR).

This letter is to advise you that Bell Atlantic plans to cease billing recurring charges for entrance facilities for one-way Type 2 paging trunks and credit the relevant charges retroactive to November 1, 1996. This process will begin once the billing system modifications are completed in December of this year.

Type 2 entrance facilities are also used for non-local traffic, (i.e., interMTA calls) and to provide paging carriers a gateway to receive calls to their customers from other networks which transits Bell Atlantic's network.

Because there is a mixture of traffic types on these dedicated entrance facilities, Bell Atlantic plans to bill a percentage of the entrance facility charge. Based on our analysis of available traffic studies, Bell Atlantic has determined that 80% of the traffic delivered to paging carriers over dedicated interconnection entrance facilities is local telecommunications traffic (intraMTA traffic) and 20% is either interMTA traffic or traffic that does not originate on Bell Atlantic's network (e.g., transit traffic originated by third parties, such as IXCs, LECs other than Bell Atlantic, CLECs and other CMRS providers).[23]

Effective October 1, 1997, Bell Atlantic will begin to bill paging providers 20% of the non-usage sensitive dedicated entrance facility charges as set forth in Bell Atlantic's access tariffs. This billing will be applied on a prospective basis only. It will not be applied retroactively to November 1, 1996.

If you have any questions concerning these changes please submit them to me in writing at:

1320 North Courthouse Road
9th Floor
Arlington, VA 22201

Sincerely,

Calvin Twyman
Wireless Contract Manager

[23] 47 C.F.R. § 51.703 provides that "[a] LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network." By implication, LECs may charge for traffic that is not local or does not originate on its network.

CERTIFICATE OF SERVICE

I, Angela E. Giancarlo, do hereby certify that copies of the foregoing Comments of the Paging and Narrowband PCS Alliance of the Personal Communications Industry Association have been sent, via first class mail on this 20th day of October, 1997 to the following:

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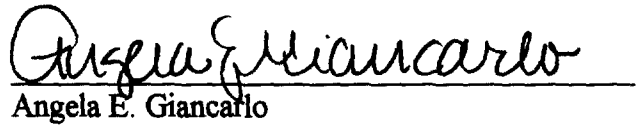

Angela E. Giancarlo

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